

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

OLLIE GREENE, *et al.*,

Plaintiffs

v.

TOYOTA MOTOR CORPORATION, *et al.*,

Defendants.

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CAUSE NUMBER: 3:11-cv-0207-N

**DEFENDANTS' JOINT MOTION TO COMPEL IMMEDIATE PRODUCTION OF
LETTER AGREEMENT MEMORIALIZING SETTLEMENT BETWEEN
PLAINTIFFS AND VOLVO GROUP NORTH AMERICA, LLC**

TO THE HONORABLE COURT:

Defendants Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc., Strick Trailers, LLC, John Fayard Moving & Warehouse, LLC and Dolphin Line, Inc. (collectively "Defendants") file this Joint Motion to Compel Production of Letter Agreement Memorializing Settlement Between Plaintiffs and Volvo Group North America, LLC ("VGNA") and would respectfully show the Court the following:

Plaintiffs and VGNA should be compelled to produce the letter agreement memorializing the settlement between them of the claims in this case. Defendants previously served a discovery request to Plaintiffs covering the settlement in TMC's First Request for Production to Plaintiffs as follows:

76. All agreements, contracts, arrangements, understandings, deals, writings, or documents evidencing any agreement, contract, arrangement, understanding or deal relating to any settlement, compromise or dismissal of any claim brought by Plaintiffs or on Plaintiffs' behalf in this lawsuit against any person, party, firm or

corporation relating to the vehicle, or to any damages, losses, expenses or injuries relating to the vehicle or the accident. This is a request for such materials and writings regardless of whether the claim was brought or made directly by Plaintiffs, or by insurance companies or carriers who made payments to Plaintiffs or for their benefit and thereby have subrogated interests into any such claims.

Plaintiffs and VGNA have now settled all claims by and between them. Doc. No. 698 at 1. The court will be required to reduce the amount of damages to be recovered by Plaintiffs, if any, by the sum of the dollar amounts of all settlements.¹ Tex. Civ. Prac. & Rem. Code § 33.012. As the dollar amount of the settlement between Plaintiffs and VGNA must be known in order for the court to do so, the letter agreement memorializing the settlement is relevant and discoverable. *See id.*; Fed. R. Evid. 401, 402; Fed. R. Civ. P. 26.

Further, the amount of the settlement between Plaintiffs and VGNA is important to Defendants evaluation of the case and possible settlement. The amount of the settlement credit that would be applied to any recovery by Plaintiffs directly impacts the magnitude of Defendants' potential exposure to a damage award, in the unlikely event they are found liable for Plaintiffs' damages. Until the terms of the settlement between Plaintiffs and VGNA are disclosed, Defendants are left to speculate as to the impact this settlement has on their potential exposure.

Plaintiffs and VGNA, however, refuse to disclose the terms of their settlement. Further, Plaintiffs contend that they do not have a "settlement agreement" with VGNA at this juncture, but simply a letter agreement memorializing their settlement. Defendants therefore move that Plaintiffs and VGNA be compelled to produce the letter agreement memorializing their settlement immediately.

¹ Plaintiffs had previously settled their claims against Charles Moody and Forest Products Transports, L.L.C., who have been designated as Responsible Third Parties in this suit.

Defendants recognize that the settlement may be confidential and agree that such information will be kept confidentially by Defendants and their counsel, and will not be disclosed without permission of the Court, or Plaintiffs and VGNA.

WHEREFORE, PREMISES CONSIDERED, Defendants Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor Sales U.S.A., Inc., Strick Trailers, LLC, John Fayard Moving & Warehouse, LLC and Dolphin Line, Inc., respectfully request that Plaintiffs and VGNA be compelled to produce the letter agreement memorializing their settlement immediately, and for such other and further relief to which they may show themselves to be entitled.

Respectfully submitted,

/s/ Kurt C. Kern

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CERTIFICATE OF CONFERENCE

Counsel for Defendants conferred with counsel for Plaintiffs and VGNA on June 3, 2014, and they refused to provide the terms of their settlement absent court order. Accordingly, this motion is before the court for its determination.

/s/ Kurt C. Kern

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all known counsel of record in this cause in accordance with the Federal Rules of Civil Procedure on this 5th day of June, 2014.

/s/ Kurt C. Kern